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**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: *[Signature]* Stephen P. Lee, Deputy County Attorney

FROM: Lynn Vous, Assistant County Attorney *[Signature]*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
Kathleen Myer, Principal Engineer/Major Projects *[Signature]*

DATE: December 20, 2004

SUBJECT: Purchase Agreement Authorization
Owner: Robert J. Maksimowicz
Parcel No. 131
C-15/Elder Creek (Ponds) improvement project

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for Parcel No. 131. The parcel is required for the C-15/Elder Creek (Ponds) improvement project. The purchase price is \$465,000.00, inclusive of attorney fees and expert costs incurred by the property owner.

I THE PROPERTY

A. Location Data

The property is located along the north side of Church Street approximately 412 feet east of County Road 15 (Upsala Road) in unincorporated Seminole County, Florida.

1. Location Map (Exhibit A);
2. Sketch (Exhibit B); and
3. Purchase Agreement (Exhibit C)

B. Address

N/A

Description

The parent tract contains 3.388 acres and is unimproved.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2003-R-121 on July 22, 2003, authorizing the acquisition of the referenced properties, and finding that the construction of the C-15/Elder Creek (Ponds) improvement project is necessary and serves a county and public purpose and is in the best interests of the citizens of Seminole County.

III ACQUISITION/REMAINDER

The County is acquiring the entire 3.388 acre property to use as a pond site.

IV APPRAISED VALUE

The County's appraised value amount as of the September 2, 2003, was \$249,800.00. The original appraisal was based on an incorrect survey, which stated that the parent tract consisted of 3.276 acres instead of 3.388 acres. The appraiser was later given the corrected legal description for the property which increased the appraised value to \$258,223.00. The County's appraisal was prepared by Florida Realty Analysts, Inc., and was approved by the County's MAI designated staff appraiser.

V BINDING OFFER/NEGOTIATIONS

On April 16, 2004, the BCC authorized a binding written offer in the amount of \$265,000.00 which was presented to the property owner. The property owner, through his attorney, Raymer Maguire, made a counter-offer in the amount of \$774,669.00. Thereafter, County staff negotiated a settlement agreement with the property owner and his attorney, in the amount of \$465,000.00, inclusive of all fees and costs incurred.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

There are many reasons why the purchase of this property through this settlement agreement is in the County's best interest. It is a fairly large whole take necessary for placement of Pond #3 in the Elder Creek/Ponds project. Large, undeveloped potential pond sites are difficult to locate in areas of rapid development. The hydraulics of the area also limit the number of suitable sites. The recent storms have illustrated the need for this project in order to improve drainage and flooding conditions in the area.

The area near the Sanford Towne Center Mall, where this property is located, is one of the most rapidly developing in the County. The County's appraisal reflects a September 2003 value of \$1.75 per square foot. Fifteen (15) months later the County's appraiser was asked to update his comparable sales to account for escalating market values in the area. The more recent sales were in the \$2.00 - \$3.50 range per square

foot. At the \$3.00 per square foot value, the property would be valued at \$442,668.00 (147,556 sf x \$3.00 per sf = \$442,668.00). Considering the updated per square foot values common in the area, the proposed settlement of \$465,000.00, including all fees and costs, is reasonable. If this parcel proceeds to litigation, it will be a few months until a date of take can be established, during which time the property values in the area will continue to climb.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$465,000.00, inclusive of all fees and costs.

LV/krc

Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

Purchase Agreement (Exhibit C)

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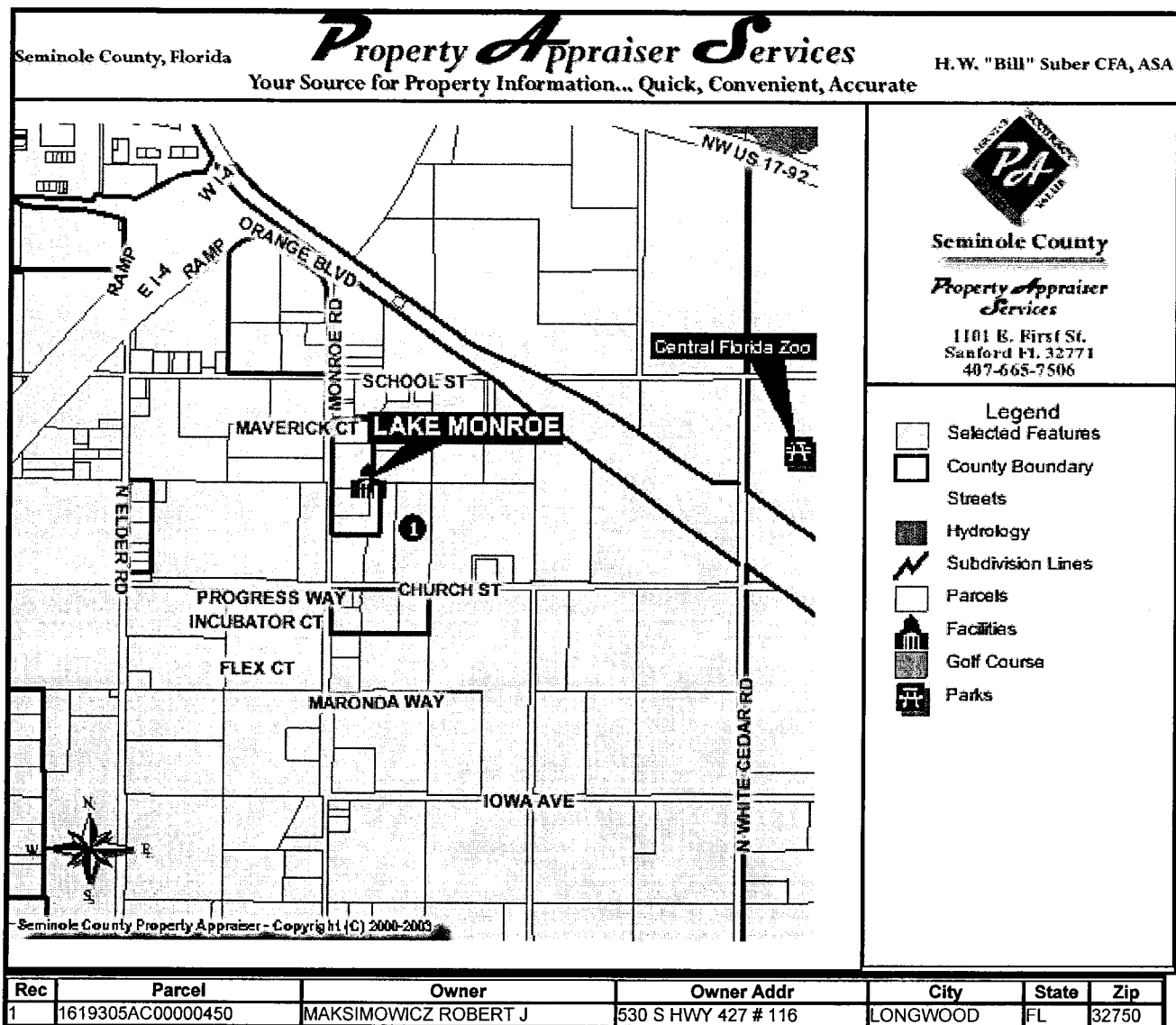


EXHIBIT A

ACQUISITION SKETCH

Parent tract 3.276 acres or 142,724 square feet
 Fee Acquisition 3.276 acres or 142,724 square feet (Shaded Area)

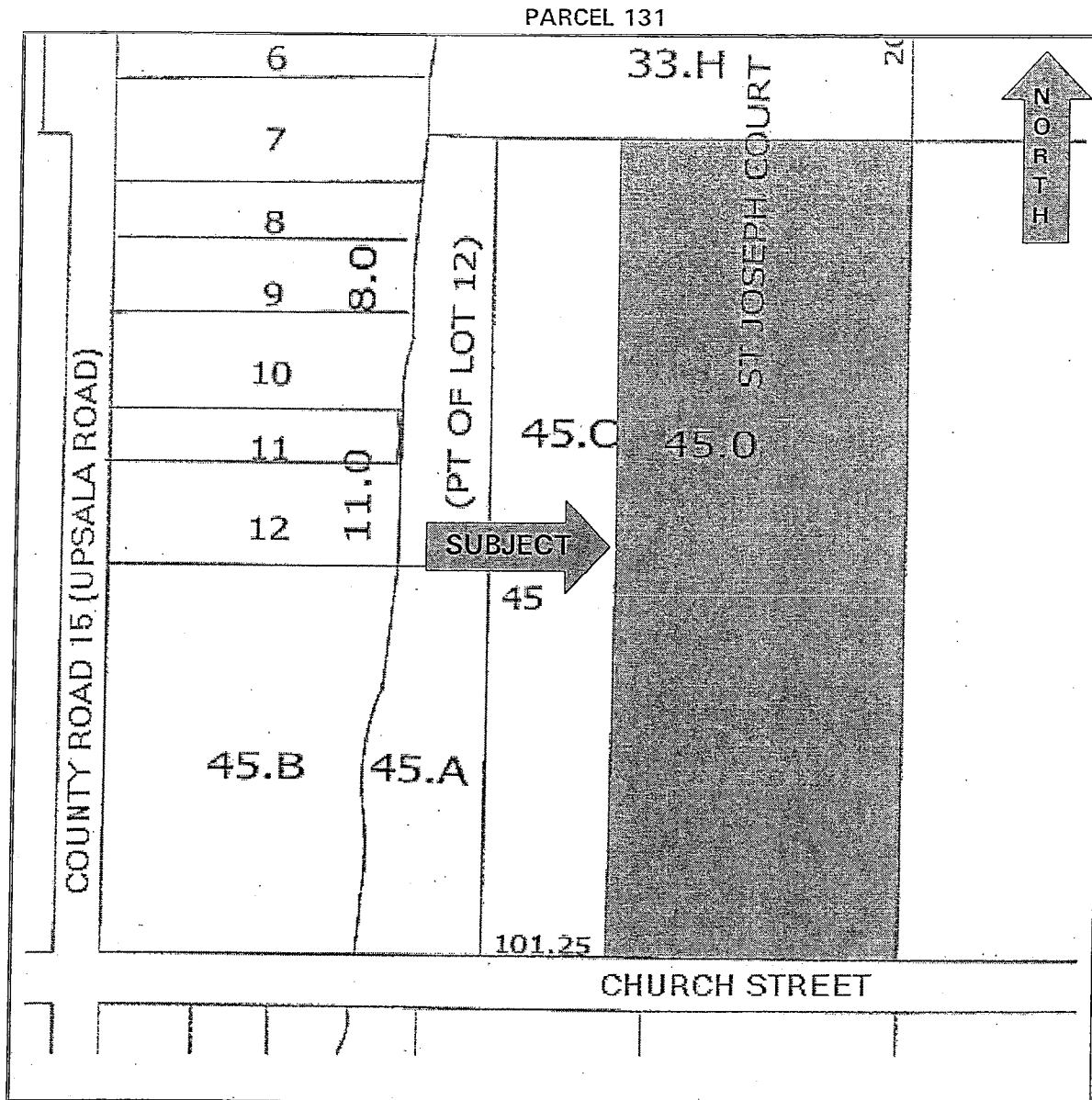


EXHIBIT B

Parcel No.:	131	Client:	Seminole County
Project:	C. R. 15 (Upsala Rd.)/Elder Creek	Appraiser:	Florida Realty Analysts, Inc.

**PURCHASE AGREEMENT
FEE SIMPLE**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this _____ day of _____, 2005, by and between ROBERT J. MAKSIMOWICZ, whose address is 530 S. Highway 427, Suite 116, Longwood, Florida 32750, hereinafter referred to as "OWNER," and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY requires the hereinafter described property for a regional stormwater facility/road improvement project in Seminole County;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, OWNER hereby agrees to sell and COUNTY hereby agrees to buy the following property upon the following terms and conditions:

I. LEGAL DESCRIPTION

See, attached Exhibit A

Parcel I. D. Number: 16-19-30-5AC-0000-0450

II. PURCHASE PRICE

(a) OWNER agrees to sell and convey the above described property of the above referenced project by Warranty Deed, free of liens and encumbrances, unto COUNTY for the sum of FOUR HUNDRED SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$465,000.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever.

(b) COUNTY shall be responsible for the following closing costs: recording fees for Warranty Deed and Title Insurance Policy issued to the COUNTY by a title insurance company of the COUNTY's choice.

(c) OWNER shall be responsible for OWNER's own attorney's fees, cost to prepare and all expenses to record instruments necessary to provide title unto COUNTY, free and clear of all liens and encumbrances, and OWNER's share of the pro-rata property taxes outstanding, up to and including the date of closing. The before mentioned closing

costs and pro-rata real estate taxes shall be withheld by the COUNTY's closing agent from the proceeds of this sale and paid to the proper authority on behalf of the OWNER.

(d) OWNER covenants that there are no real estate commissions due any licensed real estate broker and further agrees to defend against and pay any valid claims made in regard to this purchase relating to covenants made herein by the OWNER.

III. CONDITIONS

(a) COUNTY shall pay to the OWNER the sum as described in Item II., above, upon the proper execution and delivery of all the instruments required to complete the above purchase and sale to the designated closing agent. The OWNER agrees to close within seven (7) days of notice by the COUNTY or the COUNTY's closing agent that a closing is ready to occur.

(b) OWNER agrees to vacate and surrender possession of the property upon the date of delivery of the instruments and closing of this Agreement. COUNTY may, but is not obligated to, extend possession of the property by OWNER; provided, however, that such approval will be evidenced by a written document of equal dignity herewith. During the period from the date of the execution of this Agreement by both parties and the closing, OWNER agrees to exercise diligent care in protecting the property from theft and vandalism. All windows, doors, bathroom fixtures, electrical outlets, heaters and other similar items included in the purchase price, as well as the land itself, shall be preserved in normal conditions and turned over to the COUNTY by the OWNER, intact, if applicable.

(c) Any and all encroachments existing upon the property, other than those improvements included in the purchase price, are to be removed by the OWNER at the expense of the OWNER prior to closing.

(d) OWNER warrants that there are no facts known to OWNER materially affecting the value of the properties which are not readily observable by COUNTY or which have not been disclosed to COUNTY.

(e) The instrument(s) of conveyance to be utilized at closing shall, in addition to containing all other common law covenants through the use of a warranty deed, also include the covenant of further assurances.

(f) The OWNER shall fully comply with *Section 286.23, Florida Statutes*, to the extent that said statute is applicable.

(g) In the event that COUNTY subsequently abandons this project after execution of this Agreement, but before closing, this Agreement shall be null and void.

(h) In the event that difficulties arise as to clearing title sufficient to consummate a closing of this Purchase Agreement or difficulties occur in the issuance of a title insurance commitment which is acceptable to the COUNTY; this Agreement shall survive

the filing of any eminent domain action by the COUNTY and shall serve as a joint stipulation regarding all valuation issues and fees and costs matters in any condemnation proceeding initiated by the COUNTY relating to the real property herein described. The OWNER agrees that, in accordance with any request made by the COUNTY, the OWNER shall execute any and all instruments, pleadings, documents and agreements upon litigation reflecting the full settlement as set forth herein. The OWNER agrees not to oppose the COUNTY's condemnation proceedings in any way. The OWNER, may however, assert OWNER's rights against other claimants in apportionment proceedings.

(i) As part of the consideration for this Purchase Agreement, OWNER hereby grants to COUNTY, its employees, agents, consulting engineers, contractors and other representatives the right to enter upon and to have exclusive possession of the property described in Exhibit A to this Agreement. The right of entry shall commence ninety (90) days after the execution of this Agreement by COUNTY, and shall continue until closing occurs, or if closing cannot occur, until the condemnation proceedings to acquire the property have been completed. Aside from this Agreement, no further notification of COUNTY's intent to enter the property is required. This right of entry is for the purpose of construction of the Elder Creek/County Road 15 regional stormwater facility/road improvement project and so that the COUNTY's construction schedule can be maintained notwithstanding issues which may delay closing in a timely manner. OWNER will not receive from COUNTY any additional compensation beyond that set forth in this Purchase Agreement during the period of time the COUNTY occupies the above described property for the purpose set forth above for the right to enter and possess the property before conveyance of title.

(j) The OWNER shall indemnify and save the COUNTY harmless from and against all liability, claims for damages, and suits for any injury to any person or persons, or damages to any property of any kind whatsoever arising out of or in any way connected with this Agreement or in any act or omission in any manner related to said Agreement.

(k) The COUNTY shall be solely responsible for all of COUNTY activities conducted on the property. OWNER shall not be considered an agent or employee of COUNTY for any reason whatsoever on account of the Agreement.

(l) The OWNER states that the OWNER has not engaged in any action that would create a conflict of interest in the performance of OWNER's obligations under this Agreement with the COUNTY which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(m) All proceeds shall be paid to FIXEL, MAGUIRE & WILLIS trust account, with proper distribution to OWNER, attorney, and experts.

*(n) This contract shall close on or before March 15, 2005
or this contract is null and void.*



IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names on the date first above written.

WITNESSES:

[Signature]
SIGNATURE

Lynn Luzadder
PRINT NAME

Cynthia M. Monk
SIGNATURE

Cynthia M. Monk
PRINT NAME

PROPERTY OWNER:

[Signature]
ROBERT J. MAKSIMOWICZ

ADDRESS:

530 S. Highway 427, Suite 116
Longwood, FL 32750-5485

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
CARLTON D. HENLEY, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution by the Board of
of County Commissioners at its _____,
2005, regular meeting.

[Signature]
County Attorney

MDG/dre
12/10/04

P:\USERS\DEGEMWY DOCUMENTS\ACQ\ELDER CREEK PONDS\ELDER CREEK 131 MAKSIMOWICZ PA.DOC

[Signature]

Sheet 1 of 1

R/W Project: County Road 15
R/W Parcel: 131
Title Search #: 148
Tax I.D. #: 16-19-30-5AC-0000-0450
Owners Name: Robert J. Maksimowicz
Fee Simple

That portion of Lot 45, St. Joseph's Addition, according to the plat thereof, as recorded in Plat Book 1, Page 114, Public Records of Seminole County, Florida, being more particularly described as follows:

BEGIN at the Northeast corner of Lot 45, said St. Joseph's Addition; thence run South $00^{\circ}19'35''$ East, along the East line of said Lot 45, a distance of 646.09 feet to the Southeast corner of said Lot 45; thence departing said East lot line, run South $89^{\circ}57'25''$ West, along the South line of said Lot 45, a distance of 228.51 feet to the East line of the West 101.25 feet of the East 1/2 of said Lot 45; thence departing said South lot line, run North $00^{\circ}19'47''$ West, along said East line, a distance of 645.36 feet to the North line of said Lot 45; thence departing said East line, run North $89^{\circ}46'23''$ East, along said North lot line, a distance of 228.54 feet to the **POINT OF BEGINNING**.

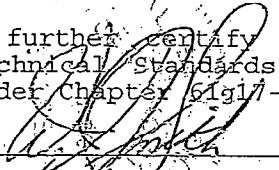
Containing 3.388 acres, more or less.

Subject to N/A

For Sketch of Description see Sheet 7 of 12 of Right-of-Way map.

I hereby certify that, to the best of my knowledge and belief, the attached legal description of Parcel 131 as shown on the Right of Way Maps for County Road 15 (Upsala Road) are true, accurate, and were prepared under my direction.

I further certify that this legal description is in accordance with the Technical Standards adopted by the Florida Board of Surveyors and Mappers under Chapter 61917-6, F.A.C.



Walter J. Smith
Florida Professional Land Surveyor No. 4807
520 S. Magnolia Avenue, Orlando, Florida 32801

Date: 4-28-04

Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.

LEGAL DESCRIPTION IS NOT A SURVEY

EXHIBIT A

